Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., N.W.
Washington, DC 20024

March 26, 2012

Sent via electronic mail to: RegComments@fhfa.gov

RE: RIN 2590-AA53; Comments of Sierra Club on the Advanced Notice of Proposed Rulemaking and EIS Scoping Comments

Dear Mr. Pollard:

The Sierra Club writes to comment on the Federal Housing Finance Agency's (FHFA) Advanced Notice of Proposed Rulemaking (ANPR) concerning the impact of Property Assessed Clean Energy (PACE) programs and FHFA's Notice of Intent (NOI) to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA).

The Sierra Club is America's largest and most influential grassroots environmental organization, with 1.4 million members and supporters. Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. The Sierra Club believes that reduced fossil fuel use in and by buildings will lessen air pollution that causes increased respiratory distress and buildup of toxic chemicals such as mercury and arsenic in humans, as well as increasing and accelerating changes to the Earth's climate.

The development of PACE programs has been a key innovation for long term efforts to increase the use of renewable energy and energy efficiency measures in the U.S. housing stock. PACE programs attack market barriers to clean energy adoption, most notably the availability of financing and the reduction of uncertainty for a homeowner that does not know how long they will remain in their home. PACE programs can potentially provide significant economic benefits to communities through increased electric reliability, job creation, and reduced energy expenditures. Local governments can implement these programs through long-accepted land secured municipal finance districts.

The passage of enabling legislation for PACE programs by 27 states speaks to the utility of those mechanisms for pursuing state economic and environmental goals. The potential of PACE's ability to be an economic engine is dramatized by the Brookings Institution's recent estimate that if only 1 percent of America's single family homeowners were to participate in a PACE program it would result in $15 billion in gross economic output, $4 billion in combined federal, state, and local tax revenue, and 226,000 jobs.

The Sierra Club stands in fundamental disagreement with both FHFA's July 6, 2010 "Statement on Certain Energy Retrofit Loan Programs" and the ANPR. We believe that FHFA erred in its assertions that:

- PACE assessments accelerate on foreclosure;

We believe that FHFA does not supply evidence that this is true. As with most special assessment liens, the obligation – and the benefits – of the upgrades transfer to the next owner.

- PACE liens increase financial risk to homeowners;

Clean energy improvements often provide substantial increase in resale value to homes, thus lessening risk to homeowners. Default rates on PACE homes have been found to be significantly lower than national averages.

- PACE programs are "loans" and are unlike other forms of municipal land-secured finance;

PACE is a form of land secured municipal finance. It is paid for through tax assessments, not through a traditional loan structure. This characterization is just "spin" on the part of FHFA.

- PACE is unlike traditional tax assessments because it is voluntary;

The ability to opt-in not a distinguishing feature of land secured municipal finance. Many past programs have allowed participation according to preference, without requiring it to gain full benefit.

- No uniform national standards exist for PACE;

DOE issued guidelines for PACE programs on May 7th, 2010 after meeting with Fannie Mae, Freddie Mac, financial regulators and PACE stakeholders. Further standards can be incorporated from H.R. 2599, the PACE Assessment Protection Act of 2011 from the current Congress.

It is unclear to us why FHFA has adopted such a militant position in opposition to PACE programs. PACE is a robust vehicle for the achievement of public interest goals that poses a negligible risk to FHFA and its enterprises. Its substantial proliferation in a relatively short period of time attests to its efficacy and the perceived need for it as a solution. We would like to see FHFA spend its time and energy finding ways that PACE can function effectively within its framework rather than working against the programs outright.

RIN 2590-AA53 EIS Scoping Comments

The Proposed Action in FHFA's EIS should be changed to allow FHFA enterprises to purchase mortgages subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations, so long as the applicable PACE program follows standards such as those set forth in H.R. 2599 or the DOE Guidelines. A NO ACTION alternative where previous statements and directives prohibiting such purchases are simply rescinded would be acceptable to the Sierra Club.

In closing, the Sierra Club urges FHFA to adopt a rule that rescinds its July 6, 2010 "Statement on Certain Energy Retrofit Loan Programs" and the subsequent directive to its enterprises that prohibits the purchase of home mortgages with PACE liens. In addition the rule should require those same enterprises to rescind their May 5, 2010 advisories. The Proposed Rule should permit FHFA enterprises to buy residential mortgage loans on properties subject to PACE obligations originated by programs that follow standards laid out by the DOE Guidelines and H.R. 2599.

Respectfully submitted,

Josh Berman
Associate Attorney
Sierra Club

Dave Hamilton
Director for Clean Energy,
Sierra Club Beyond Coal Campaign

Sierra Club
50 F St. NW
Washington, DC 20001
202-547-1141